common sense can be applied to legislation dictated by sentiment. Conversely, this right must, it would seem, continue as long as possession is retained.

The Plaintiff, after mistaking his court, served a second notice to quit. Such notice does not imply an intermediate tenancy, *Lowenthal v. Van Honte*[5]. The Defendant re-applied to the Rent Board, but received no grant of any further term certain. He probably became inevictable for a reasonable period for convenient removal. The Plaintiff then began proceedings in this Court and, after the filing of a defence contesting his claim, accepted rent for six months past.

The Defendant was never a statutory tenant in the sense of the English cases, at the same time he has always had the right to apply referred to. Since the defence was filed, and possibly before, he has alleged a right to possession, independent of any implied tenancy, and inconsistent with it. He does not himself put forward the payment of rent as a representation by conduct to him, or as being any form of compromise. He speaks of it with allegations of demanding tea money as shewing, in the words of his Counsel, that the condition of the order of 31st March, 1947, has not been fulfilled — meaning, perhaps, rather that continued negotiations have been a reason for not acting on the alleged condition. These allegations involve charges of offences under Sections 8 and 14 of the Enactment which the Defendant has taken no steps to prosecute, and I cannot, therefore, accept them entirely. An owner is, however, always free to negotiate as to his property, and nothing conclusive is even alleged.

On the view that a notice to terminate a contractual tenancy is a step in ejection, and therefore that every periodic tenancy so terminable exists at law independently of the landlord's will (and this view seems to have been taken by Plaintiff) I should hold that this case is, in essentials, indistinguishable from those cited. I do not, however, think that is the correct view of the law. The only fetters on the landlord after 30th November, 1946, are those occasioned by the law's delays and the right to re-apply, and the latter is only effective after application has been made. The Judges in the cases cited do not say that the acceptance of rent is generally conclusive. As I read these judgments, they say no more than that it may be evidence of an agreement. Scott L.J. said in *Morrison v. Jacobs*[4] at page 580: "It is erroneous, I think, to hold, in the case of a dwelling-house to which the Rent Restriction Acts apply, that where the tenant has remained in possession after a term of years and the landlord has accepted rent from the tenant, any such inference of a *consensus ad idem* between the parties to a new common law tenancy arises, because before *the passing of those Acts in certain circumstances* such an inference could be drawn." And MacKinnon L.J. at page 583 says: "I gathered that counsel's contention was that after this period of three months, the acceptance of rent by the landlord would afford some evidence of the creation of a new contractual tenancy." Shearman J., whose judgment seems to have been generally approved, said in *Davies v. Bristow*[2] at page 440: "A notice to quit can be withdrawn at any time *before* the date fixed for the termination of the tenancy. But after the time has expired the lease is at an end and a landlord can no more waive his notice to quit than he can waive the effluxion of time. I infer that the expression 'waiver of notice to quit' wherever it is used in the report merely means that the parties have arrived at a new agreement, but that agreement to be (like?) any other agreement must be proved in the ordinary way." As I understand the law, acceptance of rent is merely some evidence from which agreement may be inferred where alleged, and where it stands alone may be strong evidence. It is however, evidence and no more. It must be assessed in the light of all the circumstances and relations of the parties. In this case, to infer such agreement in all the circumstances would be manifestly unreasonable. There is, therefore, in my opinion nothing in the pleas put forward, and the Plaintiff is entitled to the relief asked.

*Judgment for Plaintiff.*

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## LEONG CHOONG v. LEONG KOH FOONG AND ANOTHER.

[Orig. Civil Juris. (Pretheroe, Ag. C.J.) June 4, 1948]
[K.L. — Civil Suit No. 29 of 1947]

*Contract Enactment (Cap. 52) s. 238 — Principal and agent — Fraudulent act by agent.*

In this case it appeared that the 1st Defendant, who was appointed by the Plaintiff as his manager, sold and transferred the business known as Wah Hing Hat Factory (belonging to the Plaintiff) to the 2nd Defendant, who had no knowledge of the first defendant's lack of title. The plaintiff claimed a declaration that he was the owner of the business.

**Held**, that by virtue of s. 238 of the Contract Enactment, the first defendant's fraudulent dealings with the plaintiff's property did not affect the rights of the plaintiff and that judgment must therefore be given for the plaintiff.

*Case referred to :—*

(1) *Farquharson Brothers & Co. v. King & Co.*, (1902) A.C. 325.

CIVIL SUIT.

*Woodward* for the Appellant.

*M. N. Cumarasamy* for the Respondents.

**Pretheroe, Ag. C. J.** : — All the parties in this case are related as the plaintiff is the father of 1st defendant and the uncle of the 2nd defendant. A certificate of non-appearance was filed in respect of the 1st defendant.

The plaintiff established a hat factory at Ipoh in the year 1928 under the name of the Wah Hing Hat Factory. He was, and remains, the sole proprietor of that factory. In 1934 plaintiff established a branch of that factory in Kuala Lumpur under the same name which was managed by his father. The latter died in 1940 and the management was undertaken by plaintiff's wife and his son the 1st defendant. In 1943 plaintiff's wife died and plaintiff travelled to Kuala Lumpur and arranged that 1st defendant should henceforward manage the business. During the Japanese occupation it was apparently difficult to secure a permit to travel from one State to another, and during the occupation plaintiff was only able to make three short visits to Kuala Lumpur. However, both before, and for a short time after, the liberation plaintiff received letters from 1st defendant which satisfied him that the business was progressing satisfactorily. He paid his first visit to Kuala Lumpur after the liberation in October, 1946, and on arrival proceeded to his factory at 103 Sultan Street. There a lady, who was the mother of the 2nd defendant, informed him that 2nd defendant had purchased the business and was conducting it in her own right.

Plaintiff was the lessee of the factory premises at 103 Sultan Street and he sub-let portions of the premises to three sub-tenants. The oral and documentary evidence given or produced by these sub-tenants establishes that plaintiff was in fact the head-tenant and that in the case of each sub-tenant plaintiff entered into the agreements in the name of the Wah Hing Hat Factory and not in his own name. On the instructions of plaintiff the rents were paid by the sub-tenants firstly to plaintiff's wife and, after her decease, to 2nd defendant. The plaintiff impressed me as being a very reliable and truthful witness and his evidence was powerfully reinforced by the evidence given by the sub-tenants. I had little difficulty in accepting the evidence I have just outlined as being true.

I now pause to consider the case as presented by the 2nd defendant. She is a mid-wife employed at Pudu Hospital, and she was so employed in 1945. In December of that year 1st defendant approached her at the hospital to enquire what fees were payable at the hospital in respect of confinements as his wife was pregnant at the time. In the course of the conversation 1st defendant informed 2nd defendant that he "wanted to sell his business as he had no capital to run it". After 1st defendant had explained the nature of the business to 2nd defendant she agreed to visit and inspect the factory. After that visit she decided to purchase the whole business as a going concern for $5,000 and paid 1st defendant that sum in Straits dollars which she said she had concealed throughout the Japanese occupation. At one stage, it is not clear to me whether it was before or after the money was paid, 2nd defendant went to the office of the Registrar of Businesses and confirmed that 1st defendant was the registered owner of the Wah Hing Hat Factory at 103 Sultan Street. An exhibit showed that 1st defendant had in fact registered himself as the sole proprietor of the business on the 7th of September, 1942. Next in sequence the two defendants went together to Mr. Kitson Khong and asked him to prepare an agreement. He did so then and there and both parties executed it in his presence and he signed as witness to the signatures. Second defendant's case is that she had no reason to suspect that 1st defendant was not the owner of the hat factory; that she did everything she could to protect herself by consulting the register at the Registry of Businesses; that the vendor was her own cousin whom she trusted; and that she relied upon the terms of the agreement which speak for themselves.

I watched 2nd defendant carefully while she gave her evidence and she appeared to answer all questions put to her in a straightforward manner and without hesitation. She apparently contradicted herself on one point. She was quite definite that she first heard of the business in the month of December, 1945, but Exhibit F, which is dated 15th November, 1945, directed the chief sub-tenant to pay his rent to her "during the absence" of 1st defendant. That exhibit was signed by 1st defendant. Put to her 2nd defendant frankly admitted that she could not explain the apparent conflict of evidence. It also seemed to me to be curious that 2nd defendant, who is a niece of the plaintiff and admitted that she had known him for a long time, maintained that she did not know that plaintiff owned the Wah Hing Hat Factory before the war. She sought to explain this statement by saying that she and plaintiff did not mix together much. Another point which I regarded with suspicion was the fact that, before the outbreak of the war and

:fore she had qualified as a mid-wife, 2nd defendant had amassed savings amounting to $5,000. Having considered the foregoing, and after some hesitation, I have come to the conclusion that 2nd defendant was a truthful witness, and I accept the version she gave of the acquisition of plaintiff's business. I accept that she dealt with 1st defendant as the principal and had no knowledge of his lack of title.

I am entirely satisfied that plaintiff appointed 1st defendant to manage the Kuala Lumpur branch of his business and that the latter had no power whatsoever to sell the business. I am equally satisfied that 1st defendant deliberately and fraudulently sold and transferred the business to 2nd defendant.

It follows that my conclusion is that two innocent parties have been the victims of a criminal act committed deliberately by a third party. The latter part of section 238 of the Contract Enactment (Cap 52) provides that :—

> "..... misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals".

In accordance with this provision, therefore, and following *Farquharson Brothers & Co. v. King & Co.*[1], I hold that 1st defendant's fraudulent dealings with plaintiff's property have not affected the latter's rights. I therefore give judgment for the plaintiff and declare that, as against both defendants, he is the owner of the business known as Wah Hing which, at the date of the trial, was carried on at No. 103 Sultan Street, Kuala Lumpur.

I cannot make the second declaration prayed in the plaint as plaintiff's tenancy agreement with the landlord of 103 Sultan Street was not proved and therefore, for all I know to the contrary, the term of the lease may have expired.

Plaintiff's costs will be taxed and paid by 1st defendant.

*Order Accordingly.*

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## POI ENG SIONG v. POI ENG SIEW AND ANOTHER.

**[Orig. Civil Juris. (Callow, J.) June 17, 1948]**
**[Seremban — Civil Suit No. 5 of 1948]**

*Courts (Restriction of Civil Jurisdiction) Ordinance 1946, s. 3 (1) (e) and Courts (Restriction of Civil Jurisdiction) (Amendment) Ordinance, 1947, Ss. 2 (c), (d), (e), 3 (2) — Jurisdiction — Whether case involves any question or matter relating to Japanese currency — Meaning of "relating to or involving."*

This was an application for an order that the proceedings in this suit which concerned the administration of an estate be stayed on the grounds that they disclose no cause of action triable by the Court.

**Held**, that it was clear from the plaint in this case that numerous matters would arise, as regards the executor's administration of the estate, which are connected with Japanese currency; that therefore the suit involved questions or matters relating to Japanese currency and therefore the Court had no jurisdiction to hear and determine the action.

CIVIL SUIT.

*M. N. Cumarasamy* for the Plaintiff.

*R. V. Rintoul* for the Defendants.

**Callow, J.** : — This is an application for an Order that the proceedings in the suit be stayed on the grounds that they disclose no cause of action triable by the Court having regard to the provisions of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946.

The suit concerns the administration of a large estate. The plaintiff is a beneficiary, and the two defendants are the Executors and Trustees. In his plaint the plaintiff prays :—

(1) that the defendants be removed from the administration of the estate of the deceased,
(2) that the movable and immovable property of the estate of the deceased be administered under the direction of this Court,
(3) that all directions for the taking of accounts be given,
(4) that a Receiver and Manager of the estate of the deceased be appointed,
(5) that such further or other relief as the nature of the case may require be given, and
(6) that costs be awarded to the plaintiff.

Thus it is apparent that the real issue is whether or no the defendants should be removed from the administration of the estate.

But the defendants have put forward this preliminary point, and argue that in consequence of section 3 (1) (e) of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, this Court lacks the necessary jurisdiction to hear and determine the action.

Section 3 (1) (e) of the Courts (Restriction of Civil Jurisdiction) Ordinance reads :—

> 3. (1) Notwithstanding the provisions of the Courts Ordinance, 1946, no Court constituted thereunder shall, during the continuance in force of this Ordinance, have jurisdiction to hear and determine any suit, action or other proceeding whatever —
> (e) in which any question or matter relating to or involving Japanese currency or any currency issued by any Japanese authority after the 7th day of December, 1941, arises or falls to be considered.

Mr. Rintoul for the defendants argued that certain paragraphs of the plaint, namely 10 (a), (b), (c), (d), (e), (h), (i), (k) and 11 must involve questions or matters relating to or involving Japanese currency.